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Mr Dean Knudson
Deputy Secretary
Environment Protection Group
Department of the Environment and Energy
By email:

And to:
Mr Matt Cahill
First Assistant Secretary,
Environment Standards Division
Department of the Environment & Energy
By email:

Copy to:
Mr Simon Writer
General Counsel
Department of the Environment &
Energy
By email:

And to:
Mr Mark Richards
Adviser to Minister for Environment
& Energy
By email:

27 February 2017

Our Ref: SCD:170017

Dear Sirs

Walker Group: EPBC Act Part 9 Referral for the Toondah Harbour Project
Your Ref: EPBC 2015/7612 ('Referral')

We are writing on behalf of the Walker Group in relation to their Referral under the *Environment Protection & Biodiversity Conservation Act 1999* (Cth) ('EPBC Act') for the Toondah Harbour project in Queensland.

We wish to draw the following points to your attention.

1. First, as you are aware, the Walker Group has been selected as the preferred contractor and entered into a Development Management Agreement to construct the Toondah Harbour Project. The project is a joint initiative of the Redland City Council and the Queensland State Government (through Economic Development Queensland) to develop in the declared Priority Development Zone a new ferry terminal for North Stradbroke Island residents and tourists together with an associated commercial retail, residential & hotel development ('Toondah Harbour Project').
2. Over the past 15 months or more, the Walker Group has appreciated the assistance and transparency of the Department in relation to the Toondah Harbour Project. The Department has been very helpful in explaining the regulatory processes involved to Walker ranging from the assessment of the Referral under the EPBC Act through to the challenges that may lie ahead given the location of the Project in the Moreton Bay Ramsar Wetland area.

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3. We have been advised on several occasions however, that the Department's view, supported by legal opinion from the Office of International Law, is that the Toondah Harbour Project is considered to be 'clearly unacceptable' for the purposes of section 74B(1) of the EPBC Act. This is due to concerns about its unacceptable impacts on the ecological character of the Moreton Bay Wetlands, being a matter protected by a provision of Part 3 of the EPBC Act by reason of Item 2 of the table in section 34 of the EPBC Act. The Moreton Bay Wetlands are declared on the List of Wetlands of International Importance from the *Convention on Wetlands of International Importance especially as Waterfowl Habitat at Ramsar, Iran, on 2 February 1971* ('Ramsar Convention').
4. As you are aware, Walker Group and its legal advisers hold a different view to the Department. We do not believe that the Toondah Harbour Project will have a clearly unacceptable impact on the ecological character of the Moreton Bay Ramsar Wetlands and that it would not be contrary to the Act for the Minister to decide that the Project is a controlled action that should be assessed by a public EIS process nor is it contrary to the Ramsar Convention for the Minister to ultimately grant an Approval under the EPBC for the Project (subject to the outcome of the EIS).
5. Over the Christmas period we sought the views of the preeminent international law Counsel, Dr Gavan Griffith QC, to provide an opinion on a number of legal questions including that of 'clearly unacceptable'. Dr Griffiths QC agreed with the prior opinions of both Peter Hanks QC and ourselves, that the Toondah Harbour Project is not 'clearly unacceptable' and that the narrow test being applied by the Department is incorrect.
6. Given the differing legal views, at a recent meeting with the Department we suggested that there may be merit in Dr Griffith QC explaining to the lawyers within the Office of International Law (who we understand provided the Department with its opinion), how he came to a different view and hearing in turn how they reached their own conclusion. Any opportunity to reach a resolution on these differing legal opinions should surely be taken as none of us, including Lang Walker, has an appetite for legal proceedings in this matter if they can be avoided.
7. It is therefore with some disappointment that we have not heard back from the Department with a time for the lawyers to meet to exchange and discuss their views. We further understand that the Solicitor General has not been briefed at this stage to provide advice on this matter to the Minister.
8. We also tried to arrange meetings last week with both Dean Knudson and Matt Cahill (who we understand have been travelling on other projects), to discuss the contents of this letter prior to it being sent, and the point at which the Walker Group finds itself. We have also tried to arrange a meeting with Mark Richards. However, given the fact that people were unavailable for meetings we have had no choice but to send this letter.
9. Although we would be happy on the one hand to continue discussions on this Project, all parties need to bear in mind that the Walker Group is only a preferred contractor for the Toondah Harbour Project and not a developer on its own land. As such, timing is critical and Walker Group is bound to push this Project forward in accordance with its legal obligations under the Development Agreement.
10. Dr Griffiths QC has suggested that given the stalemate of legal views on the 'clearly unacceptable' issue, and the fact that parties are too busy to meet, the best path forward may be to have the Federal Court decide the 'clearly unacceptable' point. To that end, Dr Griffiths QC has prepared the attached Originating Application for Relief under section 39B of the *Judiciary Act* 1903 (Cth) and for Judicial Review.

11. We have instructions from Lang Walker to file and serve this Originating Application no later than 9 March 2017 if agreement on another process has not been reached prior, as Dr Griffith QC is heading back overseas for work at that time.
12. Given the cooperation and transparency shown by the Department to date, for which we are grateful, we wanted to set out our intentions so that we also are transparent about our next steps.
13. If you wish to meet and discuss this matter, or to arrange a meeting of the lawyers, we will make ourselves, the Walker Team and Dr Griffith QC available for meetings this week.

Yours faithfully



Stephen Davis
Chief Executive Partner

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